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VIRGIN RECORDS AMERICA, INC.;  
UMG RECORDINGS, INC.; SONY BMG  
MUSIC ENTERTAINMENT; WARNER  
BROS. RECORDS INC.; and BMG MUSIC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VIRGIN RECORDS AMERICA, INC., a  
California corporation; UMG RECORDINGS,  
INC., a Delaware corporation; SONY BMG  
MUSIC ENTERTAINMENT, a Delaware  
general partnership; WARNER BROS.  
RECORDS INC., a Delaware corporation; and  
BMG MUSIC, a New York general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06032-JF

**The Honorable Jeremy Fogel**

***EX PARTE APPLICATION TO CONTINUE  
CASE MANAGEMENT CONFERENCE  
AND EXTEND TIME TO SERVE  
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference  
2 currently set for March 28, 2008, at 10:30 a.m. to July 25, 2008. Plaintiffs further request, pursuant  
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an  
4 additional 90 days – until June 26, 2008 – to serve Defendant with the Summons and Complaint. As  
5 further explained below, Plaintiffs believe they have discovered the identity of the Doe defendant in  
6 this case, and additional time is needed to file a First Amended Complaint naming Defendant  
7 personally and then to serve Defendant with process. In support of their request, Plaintiffs state as  
8 follows:

9 1. The initial case management conference is currently scheduled for March 28, 2008, at  
10 10:30 a.m.. The current deadline for service of process is March 28, 2008. No previous  
11 continuances or extensions have been requested or granted in this case.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John  
13 Doe (“Defendant”) on November 29, 2007. Plaintiffs did not have sufficient identifying information  
14 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol  
15 address assigned by Defendant’s Internet Service Provider (“ISP”). Accordingly, in order to  
16 determine Defendant’s true name and identity, Plaintiffs filed their *Ex Parte* Application for Leave  
17 to Take Immediate Discovery on November 29, 2007, requesting that the Court enter an Order  
18 allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

19 3. The Court issued an Order for Leave to take Immediate Discovery on December 4,  
20 2007, which was served upon the ISP along with a Rule 45 subpoena. On February 13, 2008, the  
21 ISP responded to Plaintiffs’ subpoena, identifying Luis Carlos Esquivel-Garza.

22 4. Once a Doe defendant is identified, it is Plaintiffs’ practice to send a letter to the  
23 defendant notifying him or her of Plaintiffs’ claims and inviting the Defendant to contact Plaintiffs  
24 and attempt to amicably resolve the dispute. In this case, the ISP was unable to provide a current  
25 U.S. address for Mr. Esquivel-Garza, who apparently is a resident of Mexico. Accordingly,  
26 Plaintiffs sent their letter to Mr. Esquivel-Garza via electronic mail. To date, Plaintiffs have not  
27 received a response.  
28

1           5.       Unless Plaintiffs are contacted by Mr. Esquivel-Garza and the matter is resolved,  
 2 Plaintiffs now intend to file a First Amended Complaint naming Mr. Esquivel-Garza personally as  
 3 the defendant, and commence with service of process. However, Plaintiffs are uncertain of  
 4 Defendant's whereabouts, and are unable to effectuate service prior to the current service deadline.

5           6.       Given the circumstances of this case, Plaintiffs respectfully request an additional 90  
 6 days – until June 26, 2008 – to effectuate service. Plaintiffs further request that the case  
 7 management conference be continued to July 25, 2008, or such other date as conveniences the Court.

8           7.       Plaintiffs submit that their efforts to give written notice to Mr. Esquivel-Garza of their  
 9 claim and attempt to resolve the case before naming him in the lawsuit constitute good cause for any  
 10 delay in perfecting service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998)  
 11 (stating good cause standard for service extensions). Moreover, unlike a traditional case in which  
 12 the defendant is known by name and efforts to serve can begin immediately after filing the  
 13 complaint, in this case Plaintiffs first had to obtain the identity of the defendant through the  
 14 subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no  
 15 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

16           8.       Because the copyright infringements here occurred in 2007, the three-year limitations  
 17 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no  
 18 prejudice to the Defendant from any delay in serving the Complaint.

19           9.       Plaintiffs will provide Defendant with a copy of this request and any Order  
 20 concerning this request when service of process occurs.

21 Dated: March 17, 2008

HOLME ROBERTS & OWEN LLP

22  
 23 By: /s/ Matthew Franklin Jaksa  
 24 MATTHEW FRANKLIN JAKSA  
 25 Attorney for Plaintiffs  
 26 VIRGIN RECORDS AMERICA, INC.;  
 27 UMG RECORDINGS, INC.; SONY BMG  
 28 MUSIC ENTERTAINMENT; WARNER  
 BROS. RECORDS INC.; and BMG  
 MUSIC

**[PROPOSED] ORDER**

Good cause having been shown:

**IT IS ORDERED**, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26, 2008.

**IT IS FURTHER ORDERED** that the case management conference currently set for March 28, 2008, at 10:30 a.m. be continued to July 25, 2008.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Honorable Jeremy Fogel  
United States District Judge